

BROWN FIELD MUNICIPAL AIRPORT (SDM)

SUMMARY

The Brown Field Municipal Airport (Brown Field) is a valuable but underutilized asset of the City of San Diego (City). Initially responding to a citizen concern about the lease policies in force at Brown Field, the 2008/2009 San Diego County Grand Jury's (Grand Jury) investigation expanded to include other issues relating to current management and development plans, and existing physical conditions at the field. The Grand Jury concluded that the management of Brown Field has not been in compliance with requirements contained in the deed conveying the Brown Field property from the United States to the City, and with grant assurances the City has given the federal government over the years as a condition of receiving federal discretionary grants. The deed and grant assurances require that Brown Field real property be utilized solely for aeronautical purposes unless proposed non-aeronautical uses are approved in advance by the Federal Aviation Administration (FAA). This requirement has been a source of conflict between the City and the FAA in the past. However, under the City's current political and operational leadership, significant progress is being made to remove the non-aeronautical-use tenants as requested by the FAA. The City is also moving forward with a far-reaching plan to develop both aeronautical and non-aeronautical facilities at Brown Field that will enhance its contribution to the aviation community and to the City. The Grand Jury commends the City's leaders and airport managers for embarking on a program to bring Brown Field into compliance, and for planning developments at the airport that will enhance its value to the region. The Grand Jury raises a note of caution, however, regarding environmental contamination issues that may exist on some of the leasehold sites, and recommends that the City require the non-aeronautical-use tenants currently remaining on airport property to contribute to an environmental remediation trust account to be used in the event a cleanup is needed.

PROCEDURES

The Grand Jury reviewed documents and media reports related to the operation of Brown Field, interviewed people with personal knowledge about the operation of Brown Field, and toured the airport to evaluate the current physical conditions.

Interviews were conducted with:

- Representatives of the City Airports Department;
- Representative of the Public Works Department; and
- Representative of the City Attorney's Office.

Documents reviewed included:

- Extensive correspondence between the FAA and various departments/offices of the City;
- Published accounts of controversies surrounding the operation of Brown Field;

- The grant assurances made to the FAA by the City as a condition of receiving federal grants, and relevant portions of documents conveying the Brown Field property to the City;
- The development proposal now being negotiated between a developer and the City; and
- Airport Layout Plan (draft).

The Grand Jury's request to interview representatives of the FAA was declined.

DISCUSSION

Ownership of Brown Field was transferred by the United States to the City on September 1, 1962, under a surplus property conveyance deed which stipulates that the land will be used solely for airport purposes. City Resolution No. 173066, accepting the deed, was passed and adopted on October 16, 1962. In subsequent years the City has also signed assurances [Title 49, U.S.C., subtitle VII, as amended] that are required to qualify for federal grants. Those assurances preclude the introduction of non-aeronautical activities at Brown Field unless these activities receive prior approval from the FAA. When airport land is not immediately needed or cannot be used for airport purposes, the FAA may approve interim use of airport land for non-aeronautical purposes. The review of correspondence from the FAA to the City indicates that the FAA typically defines "interim" as no more than two or three years.

The obligations established in the conveyance deed and grant assurances have never been waived by the FAA. The consequences to the City for non-compliance with these requirements include notification of Congress that the City is not in compliance. Non-compliance could also result in:

- Loss of future federal discretionary grants;
- The federal government withholding all current grants and grant payments;
- The federal government requiring the City to repay all grant funds previously received by the City's Airport Division; and
- Brown Field being reclaimed by the FAA.

The first three decades of Brown Field's operation under City jurisdiction were relatively uneventful, characterized by what one local publication described as "benign neglect." No particular effort was made to enhance or improve the field. Neither the City nor the FAA showed much interest in its operations. Revenue was sufficient to support Brown Field's basic operations plus an excess that was used to make improvements at the City's other municipal airport, Montgomery Field. During this period, Brown Field's major source of revenue came from fees paid by three airlines that used the field regularly plus lease income from mostly aeronautical-use tenants.

The environment changed significantly in the early 1990s. The City's political leaders directed the management of Brown Field to produce more revenue. As a result of that directive, more lucrative leases were entered into with non-aeronautical-use tenants on an interim basis. (Non-aeronautical-use tenants pay a significantly higher lease rate than aeronautical-use tenants.) Today, approximately 74 percent of Brown Field's lease

income is derived from non-aeronautical-use tenants. The grant assurances the City has given to the FAA require that all revenue generated at Brown Field be used exclusively for operation, maintenance and capital improvement of the City's municipal airports. The City has set up an Airport Enterprise Fund to receive this revenue.

The non-aeronautical-use leases entered into in the early 1990s were initially given interim approval by the FAA. After several years elapsed, that approval was withdrawn, and the FAA requested the City to eliminate the non-aeronautical-use tenants. In 2004, the FAA expressed serious concerns about the continuing predominance of non-aeronautical-use tenants at Brown Field, and the fact that some tenants holding aeronautical-use leases were improperly using their leaseholds for non-aeronautical purposes. After an inspection of the airport in the Spring of 2004, the FAA reminded the City of its obligations under the deed of conveyance and the grant assurances. In a letter to the City dated June 18, 2004, the FAA said, "Non-aeronautical activities are pervasive at SDM [Brown Field] and occupy a significant portion of the airport. . . . [N]on-aeronautical uses of airport land represent a conflict with the airport sponsors' [sic] federal obligations." The FAA directed the City to submit a plan to correct the compliance issues. The City Airports Department was thus placed in the difficult position of trying to reconcile the FAA's requirements with the directions of the City Council and the City Manager to produce revenue from Brown Field.

A series of political events occurred in San Diego in 2004 and 2005 that further affected the operation of Brown Field. The City's voters approved a "strong mayor" form of governance in 2004, which became effective January 1, 2006. Under this form, the Mayor is elected by the people but is no longer a voting member of the City Council, the legislative body. Instead, he/she is responsible for managing the daily operations of the City--equivalent to an elected Chief Operating Officer or City Manager. The impact of this change on airport operations was magnified in 2005 when the then-Mayor resigned and a new Mayor was elected in a special election. At about the same time, other personnel changes included the naming of a new Director of City Airports. Both the current Mayor and his City Airports Department management have expressed a commitment to bring Brown Field into compliance with its federal obligations and to work with the FAA to maximize the airport's value to both aviation and the San Diego region.

Efforts by the new City administration to evict the non-aeronautical-use tenants from Brown Field have been ongoing since early 2006. By late 2008, however, seventeen non-aeronautical-use tenants who had been identified for eviction remained on the site. The targeted tenants operate auto sales, auto storage and auto salvage yards. The FAA has agreed to extend the occupancy of three of the seventeen for another three years on a month-to-month rental basis. Their continued occupancy will provide needed revenue for airport operations. The fourteen remaining tenants were served with legal eviction documents early in September 2008, with the expectation that they will be removed from the site in a timely manner.

In response to a Request for Proposal issued by the City, Distinctive Properties Corporation (DPC) has proposed a major development on approximately 300 acres at Brown Field. The development will take place over five to eight years, and will include both aeronautical and non-aeronautical uses. The City has entered into an Exclusive Negotiating Agreement with DPC with the expectation that construction will begin within two years. A draft Airport Layout Plan is currently being reviewed by the FAA. The Airport Layout Plan is a formal document that takes into consideration the aviation needs of the airport for the next twenty years. If the FAA approves the plan, it would essentially give the City permission to proceed with the mixed-use development proposed by DPC. Historically, FAA permission to utilize airport property for non-aeronautical uses has been granted on an interim basis until the property is needed for aeronautical purposes.

Phase I of the DPC development will concentrate on aeronautical uses. Later phases will include commercial, industrial and retail development plus a solar power generating facility. All told, the completion of development likely would create one-time economic impacts during construction of more than \$484 million (total labor, capital and tax revenues), annual recurring economic benefits of \$272 million, and nearly 3,900 permanent jobs. Although lease income can only be used for the operation, maintenance and improvement of the City's municipal airports, the City's general fund will benefit financially from other sources of income from the development. Sales taxes, property taxes and transient occupancy taxes will provide an unrestricted income stream that can be used for general fund purposes.

A second Request for Proposal seeking aeronautical development on a separate 10.5 acre parcel of Brown Field was issued in September 2008 and will remain open until early in 2009.

Critical to the success of the projected development of Brown Field is the eviction of current non-aeronautical-use tenants. The eviction process now underway to remove these non-aeronautical-use tenants has brought to light another potential problem, however. One former tenant who operated a recycling and compost business at Brown Field filed for bankruptcy and, after removing all material of value, abandoned the site, leaving it littered with huge mounds of trash. To date the cleanup has cost the Airport Enterprise Fund over \$300,000, with approximately 12,000 cubic yards of waste gypsum board still to be removed. The total cleanup costs may run as high as \$500,000. This experience raises the issue of the City's possible financial exposure to environmental remediation costs when other tenants, particularly the auto salvage businesses, are forced to leave the site. Such a risk to the City could be reduced by establishing an environmental remediation trust account funded by the tenants. With a 30-day notice, tenants who rent airport land on a month-by-month basis could be required to contribute a specified amount into the trust account each month to at least partially defray cleanup costs the City may encounter in the future. Future leases should also include a similar provision as a condition of the lease.

FACTS AND FINDINGS

Fact: Conveyance instruments and grant assurances require limiting non-aeronautical activities at Brown Field to those which receive prior approval from the FAA.

Fact: The City is currently taking steps to remove non-aeronautical-use tenants at Brown Field for whom the FAA's interim approval has been withdrawn.

Fact: At least one eviction has resulted in a charge of approximately \$300,000 to the Airport Enterprise Fund for remediation of environmental harm caused by the tenant.

Fact: Non-aeronautical-use tenants remaining on the site include auto sales, auto storage and auto salvage operations with high potential for environmental contamination.

Finding 01: The City may face additional financial liability for environmental cleanup costs when the remaining non-aeronautical-use tenants are forced to leave the site.

RECOMMENDATIONS:

The 2008/2009 San Diego County Grand Jury recommends that the Mayor of the City of San Diego:

09-01: Require the remaining non-aeronautical-use tenants at Brown Field to contribute to an environmental remediation trust account under the auspices of the Airport Enterprise Fund to be used in the event that a cleanup is required. Future leases should also include a similar provision as a condition of the lease.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	09-01	05/26/09